

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ALAN EDWARD WUNDERLICH,

Petitioner,

Case No. 14-cv-14626
HON. GERSHWIN A. DRAIN

v.

CITY OF FLUSHING,

Respondent.

_____ /

ORDER DENYING PETITIONER'S MOTION FOR PROBABLE CAUSE [#6]

On December 31, 2014, the Court issued an Opinion and Order summarily denying Petitioner's application for writ of habeas corpus brought pursuant to 28 U.S.C. Section 2254. ECF No. 4. The Court found that it did not have jurisdiction to consider the petition because Petitioner was not challenging the fact or duration of his confinement as required by 28 U.S.C. Section 2254(a).

In the same Order, the Court also denied Petitioner a certificate of appealability and permission to proceed on appeal *in forma pauperis*. Petitioner has now filed a one-sentence motion, asserting that his claim is entitled to relief. Petitioner, however reiterates the same argument presented in his original petition. The Court therefore construes the present motion as a motion for reconsideration because the Court has already decided the issue that Petitioner raises.

Local Court Rule 7.1(h)(3) permits a party to file a motion for reconsideration. The Rule states that, in a motion for reconsideration, the movant must demonstrate a "palpable defect" by

which the court and the parties have been misled. A “palpable defect” is a defect that is obvious, clear, unmistakable, manifest, or plain. *Witzke v. Hiller*, 972 F.Supp. 426, 427 (E.D. Mich. 1997). In addition, the movant must also show that a different disposition of the case must result from a correction thereof. *Id.* A motion for reconsideration which presents the same issues already ruled upon by the court, either expressly or by reasonable implication, shall not be granted. *Ford Motor Co. v. Greatdomains.com, Inc.*, 177 F.Supp. 2d 628, 632 (E.D. Mich. 2001).

Petitioner fails to meet this burden under Local Rule 7.1(h)(3). In the present case, the arguments raised by Petitioner in his motion were already raised by reasonable implication in Petitioner's application for writ of habeas corpus. *See* ECF No. 1. Therefore, Petitioner's motion for reconsideration must be denied because the Court has already ruled upon the issues that Petitioner now reasserts. *See Hence v. Smith*, 49 F.Supp. 2d 547, 553 (E.D. Mich. 1999).

Accordingly, Petitioner's Motion for Probable Cause [#6] is **DENIED**.

SO ORDERED.

/s/Gershwin A Drain

HONORABLE GERSHWIN A. DRAIN
UNITED STATES DISTRICT COURT JUDGE

Dated: June 11, 2015